



REVIEW REPORT 145-2019

City of Regina

November 4, 2020

Summary:

The City of Regina (the City) received an access to information request from the Applicant, who sought information on themselves. The City withheld information from the Applicant pursuant to subsections 13(1), 14(1)(c), 15(1)(b), 16(1)(a), 16(1)(b), 16(1)(c), 17(1)(b), 18(1)(c), 28(1) and section 21 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the City properly applied subsections 16(1)(a), 16(1)(b), 21(a) and 28(1) of LA FOIP to the records, and that it did not properly apply subsections 14(1)(c), 14(1)(d), 15(1)(b), 18(1)(b), 18(1)(c), and 21(b) of LA FOIP to the records; the Commissioner recommended that the City continue to withhold or release records accordingly. The Commissioner also found: there were records that were non-responsive to the Applicant's access to information request; the City did not conduct an adequate search for records; the City provided its notice of extension within the legislated timeframe; and, the City did not meet the legislated timeframe to respond to an access to information request. The Commissioner recommended the City conduct a further search for records, and that it monitor its response times to ensure the measures it is taking to improve them are effective.

I BACKGROUND

[1] On January 14, 2019, the City of Regina (the City) received the following access to information request:

Any and all City of Regina records, emails/texts/pictures/video/audio/personal records on myself.

[2] In correspondence dated May 6, 2019, the City responded providing the Applicant with a partial release of records. The City cited the following subsections of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to withhold parts of the records: subsections 13(1), 14(1)(c), 15(1)(b), 16(1)(a), 16(1)(b), 16(1)(c), 17(1)(b), 28(1) and section 21 of LA FOIP.

[3] On May 7, 2019, the Applicant requested a review by my office.

[4] On May 21, 2019, my office notified both the Applicant and the City that it would be undertaking a review.

II RECORDS AT ISSUE

[5] My office received an index of records from the City. I have modified it for ease of reference:

Grouping	General Description	Number of Pages	Exemptions applied
A	Invoices from Medical Offices	66	18(1)(b), 18(1)(d), 28(1)
C	HR miscellaneous information	14	13(1)(a), 14(1)(c), 16(1)(a), 16(1)(b), 16(1)(c), 18(1)(d), 28(1)
D	Drafts of Privacy Complaint Investigation Report	32	16(1)(a), 16(1)(b), 16(1)(c), 18(1)(d), 28(1)
E	Solicitor Client emails	2	21(a), 21(b)
F	Meeting notes, drafts of reports, Solicitor client emails,	61	15(1)(b), 16(1)(a), 16(1)(b), 21(a), 21(b)
G	Solicitor Client information, Meeting notes,	13	15(1)(b), 16(1)(a), 16(1)(b), 17(1)(b), 21(a)
H	Drafts of Privacy Complaint Investigation Report	58	16(1)(a)

I	Solicitor Client information	3	14(1)(c), 21(a), 21(b)
J	Solicitor Client information, password	72	21(a), 21(b), 16(1)(a)
K	Emails with IPC, personal information, solicitor client emails,	27	21(a), 21(b), 28(1)
L	Affidavit	102	14(1)(c)
M	Human Resource Records	27	16(1)(a), 16(1)(b)
N	Human Resource Records	24	16(1)(a), 16(1)(b), 16(1)(c)
O	Human Resource Records	26	16(1)(a), 16(1)(b)
P	Human Resource Records	15	16(1)(a), 16(1)(b), 28(1)
Q	Human Resource Records	7	15(1)(b), 16(1)(a)
R	Labour Relation Records	8	16(1)(a), 16(1)(b), 28(1)
S	Labour Relation Records	39	16(1)(a), 16(1)(b)
T	Labour Relation Records	33	16(1)(a), 16(1)(b)
U	Legal Records	13	16(1)(a), 16(1)(b), 21(a), 21(b), 21(c), 28(1)
V	Records from [City Department]	45	16(1)(b)
W	Records from [City Department]	49	16(1)(a), 16(1)(b)
Z	Records from [City Department]	6	16(1)(a), 16(1)(b), 28(1)
AA	Records from [City Department]	36	14(1)(c), 15(1)(b), 16(1)(a), 16(1)(b)
AB	Records from [City Department]	13	16(1)(a), 16(1)(b), 21(a), 21(b)
AC	Records from [City Department]	51	16(1)(a), 16(1)(b), 16(1)(c), 21(a)
AD	Records from [City Department]	28	15(1)(b), 16(1)(a), 16(1)(b), 28(1)

AE	Records from [City Department]	43	15(1)(b), 16(1)(a), 16(1)(b), 28(1)
AF	Records from [City Department]	19	13(1)(a), 16(1)(a), 16(1)(b), 21(a), 21(b), 28(1)
AG	Solicitor Client information, Legal records	53	14(1)(d), 15(1)(b), 16(1)(a), 16(1)(b), 21(a), 21(b), 28(1)

[6] I note that in the course of preparing its submission, the City advised my office it meant to cite subsection 17(1)(a) of LA FOIP instead of subsection 17(1)(b) of LA FOIP; as such, the City was no longer relying on subsection 17(1)(a) of LA FOIP. The City further indicated it would also be relying on subsection 18(1)(d) of LA FOIP, but later stated it meant to rely on subsections 18(1)(c)(i), (ii) and (iii) of LA FOIP instead. As the City has released the portions of the records initially withheld pursuant to subsection 13(1)(a) of LA FOIP, I will no longer consider this exemption.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The City qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the City properly apply subsections 21(a), (b) and (c) of LA FOIP?

[8] Section 21 of LA FOIP provides:

21 A head may refuse to give access to a record that:

(a) contains information that is subject to solicitor-client privilege;

(b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

[9] Because the City has applied each subsection of section 21 to various portions of the records, I must consider each of subsections 21(a), (b) and (c) of LA FOIP as the City has applied them. I will assess each of these subsections separately as follows.

Subsection 21(a) of LA FOIP

[10] When applying subsection 21(a) of LA FOIP to a record, a local authority has three options when claiming solicitor-client privilege: 1) provide the documents to my office with a cover letter stating the public body is not waiving the privilege; 2) provide the documents to my office with the portions severed where solicitor-client privilege is claimed; or 3) provide my office with an affidavit and schedule of records. If the Commissioner has a reasonable basis for questioning the content of an affidavit, he may, exercising his formal powers and only as necessary, request additional background information by affidavit or otherwise. My office's *The Rules of Procedure* (June 10, 2019), provides further guidance to local authorities on this.

[11] On May 16, 2018, the Court of Appeal for Saskatchewan determined whether my office had authority to require local authorities to produce records that may be subject to solicitor-client privilege. *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*, 2018 SKCA 34 concluded that my office should follow the "absolutely necessary" principle. As a result, it suggested that my office follow a process to gather information about records and consider whether a *prima facie* case for solicitor-client privilege has been made before requiring a record.

[12] In this matter, the City provided my office with an affidavit, schedule of records and severed records. As my office is unable to see the severed information, I will consider whether a *prima facie* case for solicitor-client privilege has been made by the City based on what has been provided.

[13] The three-part test for subsection 21(a) of LA FOIP, found in the *Guide to FOIP, Chapter 4* (updated February 4, 2020) (Guide to FOIP) at page 247, is as follows:

1. Is the record a communication between a solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

[14] The City applied subsection 21(a) of LA FOIP to portions on pages E1, E2, F25, F34 to F61, G1 to G7, I1 to I13, J1, K13, U1 to U7, U9 to U12, AB3, AC6, AC8 to AC10, AC14, AC23, AF14, AG11, AG27, AG28, AG 41 and AG42.

[15] With respect to the records in question, the City identified them as emails or email meeting invitations; however, I note that AC14 has been described as “ED and CM Weekly Updates”.

1. Is the record a communication between a solicitor and client?

[16] For subsection 21(a) of LA FOIP to apply, there must be communication between a solicitor and client. A *communication* is the process of bringing an idea to another’s perception; the interchange of messages or ideas by speech, writing, gestures or conduct.

[17] A *client* means a person who consults with a lawyer and on whose behalf the lawyer renders/agrees to render legal advice. It appears in this matter the City is the client.

[18] A *solicitor* means a member of the Law Society and includes a law student registered in the Society’s pre-call training program. Upon review of the records and schedule of records, two of the three solicitors mentioned are current members of the Law Society and, according to the Law Society’s website, appear to be employed by the City. As the third solicitor mentioned did not appear to be a current member, my office confirmed with the Law Society that the third solicitor was a member and was employed by the City during the dates of the records in question.

[19] With respect to the remaining portions of pages E1, E2, F25, F34 to F61, G1 to G7, I1 to I13, J1, K13, U1 to U7, U9 to U12, AB3, AC6, AC8 to AC10, AF14, AG11, AG27, AG28,

AG 41 and AG42, I am satisfied that the first part of the test has been met for these pages as the matter involves a communication between a solicitor and a client. I will now apply the second part of the test to these pages.

[20] On the face of the records, however, I am not able to determine that any of the solicitors identified by the City were part of the communications at pages AC14 and AC23. As such, the first part of the test has not been met for pages AC14 and AC23 and I find that subsection 21(a) of LA FOIP does not apply to these pages. I will, however, consider these pages pursuant to subsection 21(b) of LA FOIP.

2. Does the communication entail the seeking or giving of legal advice?

[21] The scope of solicitor-client privilege is broad. It applies to all communications made with a view of obtaining legal advice. If a communication falls somewhere within the continuum of that necessary exchange of information, the object of which is the giving or receiving of legal advice, it is protected by solicitor-client privilege.

[22] *Legal advice* means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[23] With respect to its reliance on subsection 21(a) of LA FOIP, the City stated the following:

In respect of those records claimed to be protected by solicitor-client privilege, I have knowledge of, or believe, that the records relate to communications and information shared: i) between solicitor and client, and/or third party, with sufficient common interest in the same transactions; ii) for the purpose of the seeking or obtaining of legal advice or legal services; iii) intended to be kept confidential and have been consistently treated as confidential.

[24] Upon review of the records, I note that the subject headers, which were released to the Applicant, state: "Review Report"; "[name of Applicant] Recommendation"; and "Grievance Discussion". Given that the other records relate to the termination of the Applicant, and given that the exchanges included City solicitors, it appears that the remaining records to which the City has applied subsection 21(a) of LA FOIP do contain

legal advice, which is a legal consideration. As such, the second part of the test is met for the portions of pages E1, E2, F25, F34 to F61, G1 to G7, I1 to I13, J1, K13, U1 to U7, U9 to U12, AB3, AC6, AC8 to AC10, AF14, AG11, AG27, AG28, AG 41 and AG42. I will now consider the third part of the test.

3. *Did the parties intend for the communication to be treated confidentially?*

[25] Not every aspect of relations between a solicitor and client is necessarily confidential. As a general rule, the local authority must have not disclosed the legal advice, either verbally or in writing, to parties outside the solicitor-client relationship. By the nature of the records themselves, implicit confidentiality could be intended. *Implicit* confidentiality means the confidentiality is understood even though there is no statement, agreement or other physical evidence of the understanding that the information will be kept confidential. Confidentiality may also be *explicit*, which means the request for confidentiality has been clearly stated, distinctly stated or made definite, such as through documentary evidence. Express statements of confidentiality, such as email headers or footers with confidentiality messages, may qualify, but the regard for confidentiality should still be apparent within the record.

[26] With respect to the arbitration process, the City indicated that as of October, 2020 it “can confirm that this arbitration is still pending”. For this reason, I find that the need for confidentiality in the solicitor-client relationship would be implicit because the legal process in this matter is ongoing. Therefore, the third part of the test has been met.

[27] As all three parts of the test have been met, I find that the City has made a *prima facie* case that subsection 21(a) of LA FOIP applies to portions of pages E1, E2, F25, F34 to F61, G1 to G7, I1 to I13, J1, K13, U1 to U7, U9 to U12, AB3, AC6, AC8 to AC10, AF14, AG11, AG27, AG28, AG41 and AG42. I recommend that the City continue to withhold these pages pursuant to subsection 21(a) of LA FOIP.

[28] As subsection 21(a) of LA FOIP has been found to apply to the pages I noted in the preceding paragraph, I do not need to consider these pages pursuant to subsection 21(b) of LA FOIP.

[29] Further, as I have found that subsection 21(a) of LA FOIP applies to pages U3 and U4, I do not need to consider the City's application of subsection 21(c) of LA FOIP to these pages.

Subsection 21(b) of LA FOIP

[30] Subsection 21(b) of LA FOIP is a discretionary, class-based exemption. Subsection 21(b) of LA FOIP provides:

21 A head may refuse to give access to a record that:

...

(b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or

[31] The two-part test for subsection 21(b) of LA FOIP, which can be found in the Guide to FOIP at page 261, is as follows:

1. Were the records "prepared by or for" an agent or legal counsel for a local authority?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[32] The City applied subsection 21(b) of LA FOIP to portions of pages AC14 and AC23. The portions of these pages that have been released to the Applicant and have been described as follows:

- AC14, is described as "ED and CM Weekly Updates"; and
- AC23, is described as "Email for meeting".

1. Were the records “prepared by or for” an agent or legal counsel for a local authority?

[33] The record must be “prepared”, as the term is understood, in relation to the advice or services or compiled or created for the purpose of providing the advice or services.

[34] *Prepared* means to be ready for use or consideration.

[35] *By or for* means the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or for the use of, the provider of legal advice or legal-related services.

[36] The City described the severed portion of page AC14 as, “[i]nformation shared regarding Solicitor client privileged records involved in arbitration between the applicant and City of Regina”. With respect to the portion of page AC23, the City stated, “[t]he records involve decisions and possible actions to be taken in relation to the employment of [the Applicant].” I note, however, that the City has applied subsection 16(1)(a) of LA FOIP to portions of pages AC14 and AC23.

[37] As I am not able to see the portions of the records where the City has applied subsection 21(a) of LA FOIP, I am also not able to review these portions to determine if the City properly applied subsection 21(b) of LA FOIP. Section 51 of LA FOIP places the burden of proof on a local authority to demonstrate that an exemption applies. The City has not done so. Therefore, I find the City did not properly apply subsection 21(b) of LA FOIP to pages AC14 and AC23.

[38] The City has also applied subsections 16(1)(a), (b) and (c) of LA FOIP to various portions of page AC14, and subsections 16(1)(a) and (b) to one portion of page AC23. I will consider the portions of these pages further in this Report under those provisions.

3. Did the City properly apply subsection 16(1)(a) of LA FOIP ?

[39] Subsection 16(1)(a) of LA FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where release could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a local authority. Subsection 16(1)(a) of LA FOIP provides:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[40] The two-part test for subsection 16(1)(a) of LA FOIP, which can be found in the Guide to FOIP at page 119, is as follows:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses or policy options developed by or for a local authority?

[41] The City has applied subsection 16(1)(a) of LA FOIP to portions of pages C10, D2 to D8, D10 to D16, D18 to D24, D26 to D32, F2, F3, F5, F8 to F14, F27 to F33, G10 to G13, H2 to H8, J7 to J71, M5, M7 to M8, M12 to M13, M15, M16, M18 to M22, M25 to M27, N1 to N4, N9 to N18, N21, N22, O2 to O11, O13 to O20, O23, P2, Q7, R1, R7, S1, S3 to S5, S8, S9, S11, S13, S14, S20, S22 to S25, S31, S35 to S37, S39, T1, T4 to T11, T13, T17 to T33, U9 to U10, U13, V1 to V3, W4 to W6, W20, Z2 to Z4, Z6, AA3, AB3, AB7, AB9, AB12, AB13, AC2, AC4, AC6, AC8, AC9, AC11, AC14, AC20 to AC24, AC28 to AC31, AC37 to AC39, AC43 to AC47, AC50, AC51, AD1 to AD7, AD9, AD11, AD12, AD18 - AD26, AE1 to AE9, AE17 to AE20, AE26 to AE29, AE41, AE42, AF1 to AF3, AF14, AF15, AF18, AG4 to AG11, AG14 to AG18, AG20 to AG25, AG27, AG28, AG29, AG31 to AG34, AG36, AG51, and AG52.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[42] In support of its reliance on subsection 16(1)(a) of LA FOIP, the City stated:

Advice, proposals, recommendations, analyses and policy options were sought or were part of the responsibility of the person preparing the record. These records were prepared for the purpose of doing something. The person the information was intended for was someone who would be able to take action or implement the action. This correspondence was between City officials and relates to sensitive information in relation to an employee's conduct and the eventual termination of the employee...

Advice, proposals, recommendations, analyses and policy options were sought and were part of the responsibility of the person preparing these records (some of which are drafts) are in relation to a privacy incident investigation, draft meeting notes and correspondence. These draft records were prepared for the purpose of doing something. The person the information was intended for was someone who would be able to take action or implement the action. These drafts were a deliberative process to draft and redraft the advice or recommendations from various officials until a result was prepared to be communicated.

- [43] *Advice* is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which itself does not make a specific recommendation. The “pros and cons” of various options also qualify as advice. The meaning should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes the expert opinion on matters of fact on which a local authority must make a decision for future action.
- [44] A *recommendation* is a specific piece of advice about what to do, especially when given officially. It is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than advice. It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.
- [45] A *proposal* is something considered for consideration or acceptance.
- [46] *Analyses* is the detailed examination of the elements or structure or something; the process of separating something into its constituent elements.

[47] *Policy options* are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. Records containing policy options can take many forms, including a full range of policy options for a given decision, or a list or subset of alternatives that, in the public employee's opinion, are most worthy of consideration. They can also include the advantages or disadvantages of each option.

[48] I first note that the City has applied subsection 16(1)(a) of LA FOIP to portions of pages AC14 and AC23. As I am not able to view the portions of the records where the City has applied subsection 21(a) of LA FOIP, I am also not able to see these portions to determine if the City properly applied subsection 16(1)(a) of LA FOIP. Section 51 of LA FOIP places the burden of proof on a local authority to demonstrate that an exemption applies. The City has not done so. Therefore, I find the City did not properly apply subsection 16(1)(a) of LA FOIP to pages AC14 and AC23.

[49] Because the aforementioned is the same circumstance regarding the City's application of subsection 16(1)(b) of LA FOIP to the same portions of pages AC14 and AC23, I also do not find that the City properly applied subsection 16(1)(b) of LA FOIP to these portions of pages AC14 and AC23. The one exception to this is a portion of a sentence at page AC14, to which the City also applied subsection 16(1)(b) of LA FOIP. As I am able to view this portion, I will consider it pursuant to subsection 16(1)(b) of LA FOIP. I recommend that the City release the remaining portions of pages AC14 and AC23 where it has applied subsection 16(1)(a) and 16(1)(b) of LA FOIP.

[50] With respect to the remainder of the pages I identified at paragraph [43], the City has not specifically identified which parts of the pages to which it has applied subsection 16(1)(a) of LA FOIP are advice, proposals, recommendations, analyses and/or policy options. However, on the face of the records, I am satisfied that the pages contain only *analyses* or *recommendations* as follows:

- the portions of pages D2 to D8, D10 to D16, D18 to D24, D26 to D32, F2, F3, F5, F8 to F14, F27 to F33, G10 to G13, H2 to H8, J7 to J71 and Q7 appear to contain analyses or emails that form part of the analyses (e.g. the records at grouping F);

- the portions of pages H2 to H8, M5, M7, M8, M12, M13, M15, M16, M18 to M22, M25 to M27, AE1 to AE9, AE17 to AE20, AE26 to AE29, AE41 and AE42 appear to contain analyses and recommendations (some recommendations are draft); and
- the portions of pages O2 to O11, O13 to O20, O23, V1 to V3, Z2 to Z4, and Z6 appear to contain recommendations (some are drafts).

[51] I am not satisfied that the portions of the following pages contain advice, proposals, recommendations, analyses and/or policy options: C10, N1 to N4, N9 to N18, N21, N22, P2, S1, S3 to S5, S8, S9, S11, S13, S14, S20, S22 to S25, S31, S35, S37, S39, T1, T4 to T11, T13, T17 to T33, W4 to W6, W20, AA3, AB7, AB9, AB12, AB13, AC2, AC4, AC6, AC11, AC14, AC20 to AC24, AC28 to AC31, AC37 to AC39, AC43 to AC47, AC50, AC51, AD1 to AD7, AD9, AD11, AD12, AD18 to AD26, AF1 to AF3, AF15, AF18, AG4 to AG10, AG14 to AG18, AG20 to AG25, AG27, AG31 to AG34, AG36, AG51 and AG52. As such, the first part of the test is not met for these pages, and I find that the City has not properly applied subsection 16(1)(a) of LA FOIP. I will consider these pages pursuant to subsection 16(1)(b) of LA FOIP later in this Report.

2. Was the advice, proposals, recommendations, analyses or policy options developed by or for a local authority?

[52] *Developed by or for* means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the local authority, or 2) outside the local authority, but for the local authority (for example, by a service provider or stakeholder).

[53] For information to be *developed by or for* a local authority, the person developing the information should be an official, officer or employee of the local authority, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the local authority. To put it another way, in order to be *developed by or for* the local authority, the advice, proposals, recommendations, analyses and/or policy options should: i) be either sought, be expected, or be part of the responsibility of the person who prepared the record; and, ii) be prepared for the purpose

of doing something, for example, taking an action or making a decision; and, iii) involve or be intended for someone who can take or implement the action

[54] In its submission, the City stated the following:

Advice, proposals, recommendations, analyses and policy options were sought or were part of the responsibility of the person preparing the record. These records were prepared for the purpose of doing something. The person the information was intended for was someone who would be able to take action or implement the action. This correspondence was between City officials and relates to sensitive information in relation to an employee's conduct and the eventual termination...

[55] The City did not specifically state who the players were in these pages. When a local authority intends to rely on subsection 16(1)(a) of LA FOIP, it is important that it provide my office with a summary of who the players are making the advice, proposals, recommendations, analyses or policy options, and for whom they are supplying these.

[56] On the face of the records, however, it seems that the same City employees appear throughout these groupings of records. Their titles, as shown in the email footers released to the Applicant, appear to include individuals from the City's human resources department as well as individuals such as field supervisors or managers. What I have identified as *analyses* or *recommendations* at paragraph [50] appear to be made by these individuals. As the matter appears to involve a human resource issue about the Applicant, the people in the email footers would be the appropriate players.

[57] Therefore, I am satisfied that the second part of the test is met, and find that the City properly applied subsection 16(1)(a) of LA FOIP to pages D2 to D8, D10 to D16, D18 to D24, D26 to D32, F2, F3, F5, F8 to F14, F27 to F33, G10 to G13, H2 to H8, J7 to J71, M5, M7, M8, M12, M13, M15, M16, M18 to M22, M25 to M27, N21, N22, O2 to O11, O13 to O20, O23, Q7, R1, R7, V1 to V3, Z2 to Z4, Z6, AE1 to AE9, AE17 to AE20, AE26 to AE29, AE41 and AE42. I recommend the City continue to withhold the portions of the records of these pages where it has applied subsection 16(1)(a) of LA FOIP.

4. Did the City properly apply subsection 16(1)(b) of LA FOIP ?

[58] Subsection 16(1)(b) of LA FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations of officers or employees of a local authority. Subsection 16(1)(b) of LA FOIP provides:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[59] The two-part test for subsection 16(1)(b) of LA FOIP, which can be found in the Guide to FOIP at page 127, is as follows:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a local authority?

[60] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public.

[61] The remaining pages where the City applied subsection 16(1)(b) of LA FOIP are as follows: C3 to C5, C10, N1 to N4, O14, O15, O18 to O20, O23, P2, R1 to R7, S1, S3 to S10, S12 to S15, S17, S19, S22, S24, S25, S31, S34 to S37, S39, T1, T3 to T11, T13, T17 to T33, U3, U4, U12, V1 to V3, W4 to W6, Z2 to Z4, Z6, AA3, AB3, AB7 to AB9, AB12, AB13, AC2, AC4, AC8, AC9, AC11, AC14, AC15, AC18, AC20, AC24, AC28 to AC31, AC37 to AC39, AC43 to AC47, AC51, AD1 to AD7, AD9, AD11, AD12, AD18, AD19, AD21 to AD24, AD26, AF1 to AF3, AF14, AF15, AF18, AG1, AG4 to AG11, AG14 to AG18, AG20 to AG25, AG27, AG38, AG51 and AG52.

1. Does the record contain consultations or deliberations?

[62] In support of its application of subsection 16(1)(b) of LA FOIP, the City stated the following for different groupings of the records:

Emails containing consultations and/or deliberations between officers involved in a case regarding an employee. Consultations and/or deliberations were either sought, expected, or a part of the responsibility of the person who prepared the record. The records involve decisions and actions to be taken in relation to the employment of [name of individual].

...

Email from [City employee] (Privacy & Freedom of Information Officer (P&FOI Officer)) and [City employee] (HR Associate). The draft minutes were a part of the responsibility of the person who created the drafts, [City employee] who was investigating a privacy complaint made by an employee... and action was requested to review the drafts before finalizing the minutes. Requests for action were handled through these meetings.

[63] A *consultation* means the act of consulting or taking counsel together; a conference in which the parties consult and deliberate. A consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a proposal or action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past actions, such as using past information on an employee to determine what to do with them in the future.

[64] *Deliberation* means the act of deliberating; to deliberate is to weigh in mind, to consider carefully with a view to a decision or to think over. It can also be considerations and discussions of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[65] Upon review of these pages, it appears there were consultations, as defined, about a course of action regarding the Applicant. I note that some groupings in the pages, such as those in groupings S and T, also appear to include deliberations about alternative courses of action. I am satisfied that the first part of the test has been met for pages C3 to C5, C10, N1 to N4, O14, O15, O18 to O20, O23, P2, R1 to R7, S1, S3 to S10, S12 to S15, S17, S19, S22, S24, S25, S31, S34 to S37, S39, T1, T3 to T11, T13, T17 to T33, U3, U4, U12, V1 to V3, W4 to W6, Z2 to Z4, Z6, AA3, AB3, AB7 to AB9, AB 12, AB13, AC2, AC4, AC8, AC9, AC11, AC14, AC15, AC18, AC20, AC24, AC28 to AC31, AC37 to AC39, AC43 to

AC47, AC51, AD1 to AD7, AD9, AD11, AD12, AD18, AD19, AD21 to AD24, AD26, AF1 to AF3, AF14, AF15, AF18, AG1, AG4 to AG11, AG 14 to AG18, AG20 to AG25, AG27, AG38, AG51 and AG52.

2. Do the consultations or deliberations involve officers or employees of a local authority?

[66] *Involving* means including. There is nothing in the exemption that limits it to participation of only officers or employees of the local authority. It can include others as long as the collaboration is consistent with the concept of consultation.

[67] *Employees* of a local authority are defined at subsection 2(b.1) of LA FOIP as individuals employed by the local authority including individuals retained under a contract to perform services for the local authority.

[68] When relying on subsection 16(1)(b) of LA FOIP, a local authority should indicate in its submission the individuals involved in the consultation or deliberation. In its submission, the City stated the following regarding the individuals involved:

The employees listed in the arguments below were involved in this case file as HR employees, Solicitors Office (solicitor/client privileged information), Managers of employee, Director of employee, Supervisors of employee, Coordinators working with employee. A Privacy & Freedom of Information Officer was also involved in the records due to a privacy complaint filed against the City by [the Applicant].

[69] Upon review of these pages, I am satisfied that they involve the individuals the City has identified and all appear to be employed by the City. Therefore, the second part of the test has been met.

[70] As both parts of the test have been met, I find that the City properly applied subsection 16(1)(b) of LA FOIP to pages C3 to C5, C10, N1 to N4, O14, O15, O18 to O20, O23, P2, R1 to R7, S1, S3 to S10, S12 to S15, S17, S19, S22, S24, S25, S31, S34 to S37, S39, T1, T3 to T11, T13, T17 to T33, U3, U4, U12, V1 to V3, W4 to W6, Z2 to Z4, Z6, AA3, AB3, AB7 to AB9, AB12, AB13, AC2, AC4, AC8, AC9, AC11, AC14 (portion of first sentence

where redactions begin), AC15, AC18, AC20, AC24, AC28 to AC31, AC37 to AC39, AC43 to AC47, AC51, AD1 to AD7, AD9, AD11, AD12, AD18, AD19, AD21 to AD24, AD26, AF1 to AF3, AF14, AF15, AF18, AG1, AG4 to AG11, AG 14 to AG18, AG20 to AG25, AG27, AG38, AG51 and AG52. I recommend the City continue to withhold the portions of these pages where it has applied subsection 16(1)(b) of LA FOIP.

5. Did the City properly apply subsection 15(1)(b) of LA FOIP ?

[71] Subsection 15(1)(b) of LA FOIP is a discretionary, class-based exemption. Subsection 15(1)(b) of LA FOIP provides:

15(1) A head may refuse to give access to a record that:

...

(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

(i) an Act authorizes holding the meetings in the absence of the public; or

(ii) the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part or Part IV.

[72] The City did not identify which part of subsection 15(1)(b) of LA FOIP it was relying on. However, I will start by considering subsection 15(1)(b)(i) of LA FOIP. The three-part test for subsection 15(1)(b)(i) of LA FOIP is as follows:

1. Has a meeting of a council, board, commission or other body or a committee of one of them taken place?
2. Does a statute authorize the holding of the meeting in the absence of the public?
3. Would disclosure of the record reveal the agenda or substance of the deliberations of the meeting?

[73] The pages remaining that will be considered under this provision are pages Q1, Q2, Q4, S16, AG2 and AG3. The portions of these pages released to the Applicant indicate that they involve meeting notes.

- 1. Has a meeting of a council, board, commission or other body or a committee of one of them taken place?**
- 2. Does a statute authorize the holding of the meeting in the absence of the public?**

[74] A local authority seeking to rely on this exemption must establish that the local authority's meeting in question is a properly constituted *in-camera* meeting. Further, the local authority should provide details concerning when the *in-camera* meeting was held and details of the subject matter or substance of the deliberations. The local authority should not assume that this type of information will be apparent on the face of the record.

[75] In its submission, the City stated that, for example, page Q1 involved, "meeting notes from a private meeting with only City employees attending. Disclosure of the record would reveal the substance of the deliberations of the meeting". I note that the City has similarly described the other records in question.

[76] In my office's Review Report 112-2018 concerning the Saskatoon Board of Police Commissioners (the Board), the Board relied on subsection 15(1)(b)(i) of LA FOIP to withhold certain documents from an applicant. In that review, it was clear from the board's submission that the matter involved a board, and that the board was able to hold meetings in absence of the public as per subsection 27(15) of *The Police Act, 1990*.

[77] With respect to the matter before me, I am not able to determine if subsection 15(1)(b)(i) of LA FOIP applies, because the City has not clearly stated if the meetings involved a council, board, commission or other body of a committee. Further, it has not named such an entity. Finally, it has also not stated which Act authorized the meetings in the absence of the public. As the first two parts of the test have not been met, there is no need to consider the third part. Therefore, I find that the City has not properly applied subsection 15(1)(b)(i) of LA FOIP to pages Q1, Q2, Q4, S16, AG2 and AG3.

[78] Subsection 15(1)(b)(ii) of LA FOIP is meant to protect the agendas and/or the substance of deliberations of meetings of a local authority where the nature of the information discussed

is subject to another exemption under Part III of LA FOIP or is personal information subject to privacy protections under Part IV of LA FOIP.

[79] Part IV of LA FOIP includes subsection 28(1), which provides that a local authority must not disclose personal information in its possession or control without the individual's consent except if LA FOIP authorizes the disclosure. Since Part IV of LA FOIP enables a local authority to refuse access to personal information, then local authorities may close all or part of their meetings being discussed if the meeting contains personal information.

[80] The City asserted that release of the records would "reveal the substance of the deliberations of the meetings and could cause harm to the City in active litigations." For example, the City noted that page Q2 is, "minutes and notes, (some are drafts) taken from private meetings and preparation for agendas for meetings regarding the application of this access to information request. The purpose of these meetings was to investigate the complaint. This meeting was held in private with only City employees attending. Disclosure of the records would reveal the substance of the deliberations of the meeting".

[81] While some portions of the pages appear to contain deliberations regarding the Applicant, the City has not sufficiently identified how the nature of the information discussed is subject to another exemption under Part III of LA FOIP, or is personal information subject to privacy protections under Part IV. I note one exception in page Q1, which appears to contain one statement of the employment history of another individual, which is personal information pursuant to subsection 23(1)(b) of LA FOIP. This information would fall within Part IV of LA FOIP and should continue to be withheld pursuant to subsection 28(1) of LA FOIP.

[82] Because of the aforementioned, I find that the City has not properly applied subsection 15(1)(b)(ii) of LA FOIP to pages Q1 (except as I have identified personal information in the preceding paragraph), Q2, Q4, S16, AG2 and AG3. I recommend the City release the portions of pages where it has applied subsection 15(1)(b)(ii) of LA FOIP.

6. Did the City properly apply subsection 18(1)(b) of LA FOIP ?

[83] Subsection 18(1)(b) of LA FOIP is a mandatory, class-based exemption that permits refusal of access in situations where a record contains financial, commercial, scientific or labour relations information that was supplied in confidence to the local authority by a third party. Subsection 18(1)(b) of LA FOIP provides:

18(1) Subject to part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a local authority by a third party;

[84] The three-part test for subsection 18(1)(b) of LA FOIP, which can be found in the Guide to FOIP at page 191, is as follows:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by a third party to the local authority?
3. Was the information supplied in confidence implicitly or explicitly?

[85] The City has applied subsection 18(1)(b) of LA FOIP to portions of pages A1 to A15, A17 to A26, A28, A30, and A32 to A66.

[86] There are two third parties in this case that provide medically-related services. Subsection 2(k) of LA FOIP defines a *third party* as follows:

2 In this Act:

...

(k) “**third party**” means a person, including an unincorporated entity, other than an applicant or a local authority.

1. *Is the information financial, commercial, scientific, technical or labour relations information of a third party?*

[87] Section 18 of LA FOIP is designed to protect the confidential “information assets” of third parties, that provide information to the local authority. Section 18 of LA FOIP serves to limit disclosure of the confidential information of third parties that could be exploited by a competitor in the marketplace. There must be, therefore, a balance between granting access to information and protecting the business interests of third parties that could be exploited by a competitor in the marketplace.

[88] With respect to these portions of the records, the City stated:

These are invoices supplied by third parties to the City. The Fee Code, GST #, Terms, Service #, and break down in units of costs charged to the City on the invoices are associated with contractual services between the third party and the City and relate to the accounting of financial information. These codes were provided to the City in confidence implicitly and were therefore, redacted.

[89] The City appears to indicate that the information in question is “financial information”. The Guide to FOIP at page 159, defines financial information as:

Financial information is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The financial information must be specific to a particular party.

[90] First, I consider whether a GST number is financial in nature. In so doing, I rely on Alberta Information and Privacy Commissioner (AB IPC) Order F2019-17. In that Order, the AB IPC described a GST number as, “a tax number assigned to a business by the Canada Revenue Agency (CRA). This could be characterized as commercial information”.

[91] The Guide to FOIP at page 159 defines commercial information as follows:

Commercial information means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records.

[92] Therefore, I find that the GST numbers in the record relate to the selling or providing of a service, and would be commercial information pursuant to subsection 18(1)(b) of LA FOIP.

[93] The remaining data elements are fee or service codes, terms and unit costs. In Review Report 197-2016 concerning Saskatchewan Government Insurance (SGI), at paragraph [17], I stated examples of what constitutes commercial information. The terms and conditions for providing services and products by a third party was included in those examples. That is, it is information related to the buying and selling of goods. In Review Report 229-2015, also concerning SGI, my office considered that pricing, including per unit and lump sum pricing, was also associated with the buying, selling or exchange of goods and services. Similarly, in this matter, the fee or service codes, terms and unit costs would all be related to services provided by the third party, and would also be commercial in nature, not financial. As such, I am satisfied that for the purposes of subsection 18(1)(b) of LA FOIP that fee or service codes, terms and unit costs constitute commercial information as defined.

[94] I find that the first part of the test has been met for pages A1 to A15, A17 to A26, A28, A30, and A32 to A66. I will now consider the second and third parts of the test.

2. Was the information supplied by a third party to the local authority?

3. Was the information supplied in confidence implicitly or explicitly?

[95] *Supplied* means provided or furnished. Information may be *supplied* if it was directly supplied to the local authority by a third party.

[96] In its submission, the City has not identified who the third parties were. Upon review of the pages the portions released to the Applicant indicate that the records involve medical or counseling invoices sent to the City. As such, they have been supplied by third parties, thus meeting the second part of the test. I will now consider if they were supplied in confidence, either explicitly or implicitly.

[97] *In confidence* usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the

information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of the local authority and the third party providing the information.

[98] In its submission, the City stated, “[t]hese codes were provided to the City in confidence implicitly and were therefore, redacted”. The City did not provide further arguments to support that the information was supplied implicitly in confidence.

[99] *Implicitly* means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. Factors to consider if information was supplied in confidence *implicitly* include: 1) if the information would normally be kept confidential by the third party or the local authority; 2) if the information is normally publicly available; 3) if the local authority has policies and procedures concerning the confidential management of such records; or, 4) if there was a mutual understanding that the information would be kept confidential.

[100] Upon review of the records, I note that the GST number, terms and unit costs are particular to services provided by one service provider, which I will call Service Provider A. The fee codes are particular to a service provided by one medical clinic; I will refer to this as Service Provider B.

Service Provider A

[101] With respect to the GST numbers included in Service Provider A’s invoices, I rely on Order F2019-17 from the AB IPC who considered whether or not GST numbers, as commercial information, could be supplied in confidence. At paragraph [134] of that Order, the AB IPC stated:

...[t]he GST number is not the type of information that can be supplied in confidence because businesses are required to provide this information to customers on receipts and invoices. There is no indication from the CRA website that GST numbers should

be protected or considered confidential. Information cannot be supplied in confidence to a public body where it is provided in a non-confidential manner elsewhere.

[102] I am of the same view that GST numbers, when provided on an invoice that would be provided to others in a non-confidential manner, would not be provided in confidence. I find, therefore, that the City did not properly apply subsection 18(1)(b) of LA FOIP to the GST numbers as they appear in the records. I recommend the City release this information.

[103] With respect to unit costs on Service Provider A's invoices, I note that the webpage for this particular service provider does include unit costs, but these appear to be different from what is included in the record and so I am not able to say that the unit costs could be publicly-known information. If the unit costs have been negotiated through a contract between the City and Service Provider A, the City has not stated as such. Because I lack sufficient information to determine otherwise, I find that the City has not properly applied subsection 18(1)(b) of LA FOIP to the unit costs as they appear in the records. I recommend the City release this information.

[104] With respect to the terms on Service Provider A's invoices, "terms" relates to repayment terms. As with unit costs, repayment terms may be something that is negotiated between a local authority and a third party, but the City has not stated this is the case. As the City has not provided a persuasive argument for how the expectation of confidentiality with respect to the terms is *implicit* or should remain confidential, I find that the City has not properly applied subsection 18(1)(b) of LA FOIP to the terms as they appear in the records. I recommend the City release this information.

Service Provider B

[105] With respect to the service codes in Service Provider B's invoices, the portions of the records released to the Applicant indicate that the service was in relation to a "Request for Information" made by the City's human resources department. The City has not stated whether or not the fee codes are particular to the clinic, or if they are particular to something else such as the *Saskatchewan Medical Association's Fee Guide* (for uninsured services),

which is published. As the City has not provided a persuasive argument for how or why the service codes were supplied in confidence *implicitly*, I find that the City did not properly apply subsection 18(1)(b) of LA FOIP to the service codes as they appear in the records. I recommend the City release this information.

7. Did the City properly apply subsection 18(1)(c) of LA FOIP to the records?

[106] The City initially applied subsection 18(1)(d) of LA FOIP in error to portions of pages C13 and C14. Later, the City stated that it “inadvertently coded the records [C13 and C14] to 18(1)(d) instead of 18(1)(c). We ask that the IPC take this into consideration and revise the coding to 18(1)(c)”. As such, I will continue my analysis of pages C13 and C14 pursuant to subsection 18(1)(c) of LA FOIP.

[107] With respect to a description of pages C13 and C14, the City stated the following:

C13 - C14: contains a breakdown of the number of hours and the cost per hour charged to the City by a third party. Release of this information may result in financial loss, prejudice the competitive position or interfere with the contractual or other negotiations of the third party.

[108] As it appears the City is relying on subsections 18(1)(c)(i), (ii) and (iii) of LA FOIP, I will consider each subclause of subsection 18(1)(c) of LA FOIP separately.

Subsection 18(1)(c)(i) of LA FOIP

[109] Subsection 18(1)(c)(i) of LA FOIP provides as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...
(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

a third party; or

[110] The two-part test for subsection 18(1)(c)(i) of LA FOIP, which can be found in the Guide to FOIP at page 203, is as follows:

1. What is the financial loss or gain being claimed?
2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

1. What is the financial loss or gain being claimed?

[111] Subsection 18(1)(c)(i) of LA FOIP is a mandatory, harm-based exemption. It permits refusal of access in situations where disclosure of information could reasonably be expected to result in financial loss or gain to a third party.

[112] *Final loss or gain* must be monetary, have a monetary equivalent, or value (e.g. loss of revenue or loss of corporate reputation).

[113] I have already defined what constitutes a third party under LA FOIP earlier in this Report. As the City has noted, pages C13 and C14 contain unit costs that it has redacted pursuant to subsection 18(1)(c)(i) of LA FOIP.

[114] I note that the City's submission does not provide any arguments for what financial loss or gain of the third party is being claimed pursuant to subsection 18(1)(c)(i) of LA FOIP. Section 51 of LA FOIP establishes that the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned. As the first part of the test is not met, I find that the City has not properly applied subsection 18(1)(c)(i) of LA FOIP to pages C13 and C14.

Subsection 18(1)(c)(ii) of LA FOIP

[115] Subsection 18(1)(c)(ii) of LA FOIP provides as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

...

(ii) prejudice the competitive position of; or

...

a third party; or

[116] The two-part test for subsection 18(1)(c)(ii) of LA FOIP, which can be found in the Guide to FOIP at page 208, is as follows:

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

1. What is the prejudice to a third party's competitive position that is being claimed?

[117] *Prejudice* in this context refers to detriment to the competitive position of a third party.

[118] *Competitive position* means the information must be capable of use by an existing or potential business competitor, whether or not that competitor currently competes for the same market share.

[119] The City has not made an argument for what prejudice to the third party's competitive position exists in this matter pursuant to subsection 18(1)(c)(ii) of LA FOIP. Section 51 of LA FOIP establishes that the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned. As the first part of the test has not been met, I find that the City has not properly applied subsection 18(1)(c)(ii) of LA FOIP to pages C13 and C14.

Subsection 18(1)(c)(iii) of LA FOIP

[120] Subsection 18(1)(c) of LA FOIP provides as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

...

(iii) interfere with the contractual or other negotiations of;

a third party; or

[121] The two-part test for subsection 18(1)(c)(iii) of LA FOIP, which can be found in the Guide to FOIP at page 213, is as follows:

1. Are there contractual or other negotiations occurring involving a third party?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?

1. Are there contractual or other negotiations occurring involving a third party?

[122] A *negotiation* is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

[123] In its submission, the City has not stated what contractual or other negotiations exist pursuant to subsection 18(1)(c)(iii) of LA FOIP with respect to the unit costs. Section 51 of LA FOIP establishes that the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned. As such, the first part of the test is not met, and I find that the City did not properly apply subsection 18(1)(c)(iii) of LA FOIP to pages C13 and C14.

[124] As the City has not properly applied subsections 18(1)(c)(i), (ii) and (iii) to pages C13 and C14, I recommend the City release the unit costs on pages C13 and C14 to the Applicant.

8. Did the City properly apply subsection 14(1)(c) of LA FOIP ?

[125] Subsection 14(1)(c) of LA FOIP is a discretionary, harms-based exemption. This means it contains both a class and a harms-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation. Subsection 14(1)(c) of LA FOIP provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[126] The two-part test for subsection 14(1)(c) of LA FOIP, which can be found in the Guide to FOIP at page 52, is as follows:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist: a) could release of the information interfere with a lawful investigation? Or; b) could release disclose information with respect to a lawful investigation.

[127] The pages remaining in which the City applied subsection 14(1)(c) of LA FOIP are as follows: C7, L1 to L102, AA4, AA5, AA7 to AA11, AA13, AA14, AA16, AA17, AA19 to AA23, AA25, AA27, AA29, AA31, AA33 and AA35.

1. Does the local authority's activity qualify as a "lawful investigation"?

[128] A *lawful investigation* is one that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring or has occurred. The investigation can be concluded, active and ongoing, or be occurring in the future. A *lawful investigation* is not limited to one conducted by a local authority; it can include one conducted by other organizations, such as a police investigation.

[129] With respect to its application of subsection 14(1)(c) of LA FOIP, the City stated:

On [date] an allegation of workplace harassment was made by a complainant against [name of Applicant] (referred to in this section as the respondent) to the Employer, The City of Regina. The Employer appointed an investigator to conduct an investigation into the harassment complaint. Harassment by the respondent against the complainant was found to be substantiated by the investigator... As a result of the harassment investigation findings, the Employer terminated the respondent's employment on [date]. At the arbitration hearing scheduled for [date], the Arbitration Board will make findings of fact based on evidence called at the hearing and will determine whether harassment occurred based on the findings of fact. If the Arbitration Board concludes the respondent did harass the complainant, the Board will also determine whether termination of the respondent's employment was the appropriate disciplinary response by the Employer.

[130] The City's assertion is that the records involve an arbitration process. The City has not, however, described which law authorizes the arbitration process. As such, the first part of the test is not met, and I find that the City has not properly applied subsection 14(1)(c) of LA FOIP to pages C7, L1 to L102, AA4, AA5, AA7 to AA11, AA13, AA14, AA16, AA17, AA19 to AA23, AA25, AA27, AA29, AA31, AA33 and AA35.

[131] I recommend the City release the portions of the records at pages L1 to L102, AA4, AA5, AA7 to AA11, AA13, AA14, AA16, AA17, AA19 to AA23, AA25, AA27, AA29, AA31, AA33 and AA35 where it applied subsection 14(1)(c) of LA FOIP. As the City has applied subsection 14(1)(d) of LA FOIP to page C7, I will consider page C7 pursuant to that subsection in the following section of this Report.

9. Did the City properly apply subsection 14(1)(d) of LA FOIP ?

[132] Subsection 14(1)(d) of LA FOIP is a discretionary, harms-based exemption. It provides refusal of access in situations where release of a record could be injurious to the local authority in the conduct of existing or anticipated legal proceedings. Subsection 14(1)(d) of LA FOIP provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

[133] The two-part test for subsection 14(1)(d) of LA FOIP, which can be found in the Guide to FOIP at page 54, is as follows:

1. Do the proceedings qualify as existing or anticipated legal proceedings?
2. Could disclosure of the records be injurious to the local authority in the conduct of legal proceedings?

[134] The City has applied subsection 14(1)(d) of LA FOIP to portions of pages: C7, AG1, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG23, AG24, AG40, AG43 to AG47 and AG49.

1. Do the proceedings qualify as existing or anticipated legal proceedings?

[135] *Legal proceedings* are any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration. It includes proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal for the acquiring of a right or the enforcement of a remedy. Labour grievances have been recognized as legal proceedings for statutory purposes. To qualify, the legal proceedings must be “existing or anticipated” as the provision uses these terms.

[136] *Anticipated* means more than merely possible; it is regarded as probable.

[137] With respect to the proceeding, the City stated the following:

On [date] found in Appendix A attached to this letter the applicant commenced legal action against the City. The legal action was commenced by the filing of a grievance pursuant to a collective agreement between [union] and the City. The grievance contests the validity of termination of the applicant’s employment with the City. The legal action is ongoing. The action has progressed through the process outlined in the collective agreement to the point of arbitration. Arbitration has not yet occurred.

[138] In Review Report LA-2014-004, my office stated at paragraph [13] that union grievances involving arbitration proceedings have the effect of determining the rights of the parties involved as well as that possible sanctions can be imposed. Union grievances, therefore, have been found to qualify as a legal proceeding for the purposes of this provision.

[139] I am satisfied that in this matter, the records in question involve information about an arbitration process between the City and the Applicant, the outcome of which will determine the rights of the parties involved. As the City has confirmed that as of the writing of this report that arbitration has not yet occurred, I am satisfied that the matter involves a legal proceeding that is *anticipated*. As the first part of the test has been met, I will now consider the second part of the test.

2. Could disclosure of the records be injurious to the local authority in the conduct of legal proceedings?

[140] There must be objective grounds for believing that disclosing the information could result in injury. Section 14 of LA FOIP uses the word *could* versus *could reasonably be expected to* as seen in other provisions of LA FOIP. The threshold for *could* is somewhat lower than a reasonable expectation. The requirement is that release could have the specified result. There would still need to be a basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked.

[141] *Injury* implies damage or detriment. The exemption is designed to protect the local authority from harm in its existing or anticipated legal proceedings. To be injurious to the local authority, the local authority must be a party to the proceedings.

[142] In support of its application of subsection 14(1)(d) of LA FOIP, the City stated the following:

The City has released all information to the applicant that the applicant is entitled to receive to prepare [their] own case. The information that has been redacted is information the applicant is not entitled to receive through the procedures and law that

apply to the arbitration. The information that is redacted would, if released, prejudice the City's position in the arbitration.

[143] The majority of the City's arguments for this provision focus on how my office should view or interpret subsection 14(1)(d) of LA FOIP. My office's Review Report LA-2014-003, also concerned the City and its application of subsection 14(1)(d) of LA FOIP. With respect to the City's application of subsection 14(1)(d) of LA FOIP in that matter, the Commissioner stated, "[w]ith regards to the injury that release of the records could cause, the City's submission did not focus on presenting such a case. Rather, the City's submission focused on how the Commissioner should interpret the section of LA FOIP". As a result, the Commissioner found the City had not established that subsection 14(1)(d) of LA FOIP applied.

[144] In the matter before me, it appears that the City has again focused more on how my office should view or interpret subsection 14(1)(d) of LA FOIP, rather than just providing an argument for why this subsection applies to the information in the record, or how it would prejudice the City's position in the arbitration process against the Applicant. The City has not provided a persuasive argument or evidence for the harm that could occur as a result of releasing the record. As such, the second part of the test has not been met, and I find that the City has not properly applied subsection 14(1)(d) of LA FOIP to pages C7, AG1, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG23, AG24, AG40, AG43 to AG47 and AG49. I recommend the City release the portions of the records at pages C7, AG1, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG23, AG24, AG40, AG43 to AG47 and AG49 where it applied subsection 14(1)(d) of LA FOIP

[145] I wish to add that portions of the records at pages AG1, AG12, AG14, AG15, AG20, AG21, AG23 and AG24 where the City applied subsection 14(1)(d) (and in some cases only subsection 14(1)(d)) contain subjective, personal information about the Applicant as defined by subsection 23(1)(h) of LA FOIP. Pursuant to subsection 30(1) of LA FOIP, the Applicant would have a right of access to such personal information about themselves, which is another reason to release the information on these pages.

10. Did the City properly apply subsection 28(1) of LA FOIP to the records?

[146] Subsection 28(1) of LA FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 28(1) of LA FOIP requires the local authority to have the consent of the individual whose personal information is in the record prior to releasing it. Subsection 28(1) of LA FOIP provides as follows:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[147] When dealing with information in a record that appears to be personal information, the first step is to confirm that it is indeed personal information pursuant to section 23 of LA FOIP. Once confirmed to be personal information, the local authority needs to determine if getting consent from the individual is reasonable, or if release is possible without consent pursuant to subsection 28(2) of LA FOIP. I note that in this matter, the City has not received consent from any party to release their personal information pursuant to subsection 28(1) of LA FOIP.

[148] The City applied subsection 28(1) of LA FOIP to portions of pages A16, A21, A23 to A27, A30, A31, B1, B2, C1, C4, K1, K3, K14, K25, M17, N20, O1, P4, P12, R8, S2, T12, U1, Z6, AD15, AE5 to AE9, AF19, AG10, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG24, AG25 and AG30.

[149] Subsections 23(1)(c), (d), (f) and (k) of LA FOIP provide as follows:

23(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(d) any identifying number, symbol or other particular assigned to the individual;

...

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;
or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[150] Upon review of the information in the pages, I find that the pages include personal information as follows:

- Portions of pages A27, A31, C1, C4, K1, K3, K14, K25, M17, N20, O1, P4, P12, S2, Z6, AE5 to AE9, AF19, AG10, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG24, AG25 and AG30 contain personal information about another employee pursuant to subsections 23(1)(c) or 23(1)(k) of LA FOIP;
- Portions of pages C1 and C4 contain personal registration number of another individual pursuant to subsection 23(1)(d) of LA FOIP;
- Portions of pages R8, AG10 and AG17 contain personal opinions or views of another with respect to themselves or another individual (i.e. not the Applicant) pursuant to subsection 23(1)(f) of LA FOIP; and
- Portions of pages P4, P12, AF19, AG10, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG24, AG25 and AG30 contain the home or email address of another individual pursuant to subsection 23(1)(d) of LA FOIP.

[151] As such, I find that the City appropriately applied subsection 28(1) of LA FOIP to these pages.

[152] With respect to the portions of the records at pages T1 and AD15 to which the City has applied subsection 28(1) of LA FOIP, the City submitted these portions of the records contain information on the number of other individuals involved in grievances. In Review Report F-2014-005, the former Commissioner considered at paragraph [27] that, “[t]he ability to identify a teacher and victim increases when a community is small”. Similarly, the various units or departments of the City are like small communities, where employees may or may not know details about other employees, such as who else was or is involved

in a grievance. The smaller the unit or department, the greater the ability to identify someone in the unit based on certain types of factors or information. Taking this into consideration, I am satisfied that knowing the number of other grievances may lead the Applicant to identify who else had a grievance with the City, which forms part of their employment history pursuant to subsection 23(1)(b) of LA FOIP. As such, I find that the City properly applied subsection 28(1) of LA FOIP to the portions of the records at pages T1 and AD15.

[153] I recommend the City continue to withhold the information from the records as I have outlined at paragraphs [150] and [152].

[154] I note that that the City did not provide an explanation for the portions of pages B1 and B2 where it applied subsection 28(1) of LA FOIP. Upon review, the released portions of these pages appear to indicate they are emergency contact documents completed by the Applicant, and include phone numbers of others that the Applicant supplied. Although subsection 28(1) of LA FOIP would generally apply to this information, in Review Report 059-2017 at paragraph [40], I stated that, “[i]t would be an absurd result to withhold information from the Applicant that he had either supplied or already has knowledge of...” As such, the City could have released this information as the Applicant had supplied the telephone numbers in the first place. I recommend the City release this information to the Applicant.

11. Are there records that are non-responsive to the access to information request?

[155] When a local authority receives an access to information request, it must determine which information in the records is responsive to the access to information request. *Responsive* means relevant or anything that is reasonably related to the request. Records that do not reasonably relate to an access to information request are considered *non-responsive*.

[156] A local authority can sever information as non-responsive only if the Applicant has requested specific information, such as their own personal information. The local authority

may treat portions of the records as non-responsive if they are clearly separate and distinct, and not reasonably related to the access to information request.

[157] In its index of records, the City noted that portions of the following pages were non-responsive: A16, A27, A31, M1 to M5, M7, M8, M10, M23, M24, N5 to N8, N18 to N20, N23, N24, O12, O21, O22, O24 to O26, P1, P3, P5 to P11, Q3, S24 to S27, S31 to S33, T12, U1, U7, U8, U13, V3, V5, V6, V8, V10 to V29, V31 to V45, W2, W3, W10 to W19, W22 to W33, W35 to W41, W43, W44, W46, W47, W49, X2, X4 to X11, X13 to X27, Y2, Y4, Y5, Y7, Y8, Y10 to Y13, Y15, Y16, Y18, AA2, AB2, AB5, AB6, AB9, AB11, AC1 to AC3, AC5, AC6, AC7, AC 11, AC12, AC14, AC16 to AC19, AC25 to AC27, AC32 to AC36, AC40, AC41, AC51, AD13, AD15, AD17, AD28, AE10, AE11, AE13 to AE16, AE22 to AE25, AE31 to AE35, AE37 to AE40, AE41, AF5 to AF8, AF10 to AF13, AF17, AF18, AG12, AG13, AG23, AG30 and AG31.

[158] In the access to information request, the Applicant sought “[a]ny and all City of Regina records, emails/texts/pictures/video/audio/personal records...” about the Applicant.

[159] In its submission, the City stated that portions of pages N7, N8, N18 and N19 contained, “[m]eeting information that is not in relation to the applicant or the request.” Upon review of these portions of the records, I am satisfied that they do not contain information related to either the Applicant or the Applicant’s request. The portions of the records at these pages appear to contain information about the City’s own operational matters. Therefore, I find that the portions of the records at pages N7, N8, N18 and N19 are non-responsive to the access to information request.

[160] With respect to the portions of the remaining pages identified at paragraph [148], the City stated, “[i]nformation, consultations, drafts of correspondence, regarding a different employee and/or individual than the applicant some of which was personal information or the name of the other individual. This information removed was not related to this request”.

[161] Upon review of these portions of the records, I note that there is some repetition of information (e.g. repetitious emails). I further note that the City has also applied subsection

28(1) of LA FOIP to the same portions at pages A27, A31, AG12 and AG30. As I already found that subsection 28(1) of LA FOIP applied to those portions, I do not need to consider if they are non-responsive to the access to information request.

[162] Upon review of the pages that remain, however, I am satisfied that they do not contain information pertaining to the Applicant or to the Applicant's request, and so are not responsive. It appears that some of these portions may also qualify as personal information of other individuals pursuant to subsection 23(1) of LA FOIP. As such, I find that the portions of the following pages are also non-responsive to the access to information request: A16, M1 to M5, M7, M8, M10, M23, M24, N5 to N8, N18 to N20, N23, N24, O12, O21, O22, O24 to O26, P1, P3, P5 to P11, Q3, S24 to S27, S31 to S33, T12, U1, U7, U8, U13, V3, V5, V6, V8, V10 to V29, V31 to V45, W2, W3, W10 to W19, W22 to W33, W35 to W41, W43, W44, W46, W47, W49, X2, X4 to X11, X13 to X27, Y2, Y4, Y5, Y7, Y8, Y10 to Y13, Y15, Y16, Y18, AA2, AB2, AB5, AB6, AB9, AB11, AC1 to AC3, AC5, AC6, AC7, AC 11, AC12, AC14, AC16 to AC19, AC25 to AC27, AC32 to AC36, AC40, AC41, AC51, AD13, AD15, AD17, AD28, AE10, AE11, AE13 to AE16, AE22 to AE25, AE31 to AE35, AE37 to AE40, AE41, AF5 to AF8, AF10 to AF13, AF17, AF18, AG13, AG23, and AG31. Although the City is not obligated to provide the Applicant with the non-responsive information, I recommend that it provide the non-responsive information to the Applicant subject to any exemptions. I generally suggest this as a best practice as unnecessary severing can make applicants suspicious that information is being hidden.

12. Did the City conduct an adequate search for responsive records?

[163] Section 5 of LA FOIP provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[164] Section 5 of LA FOIP is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under LA FOIP.

[165] The threshold for search efforts is one of “reasonableness”, and so is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable. LA FOIP does not require a local authority to provide with absolute certainty that records do not exist, but it must demonstrate it conducted a reasonable search to locate them.

[166] When conducting a review of a local authority’s search efforts, my office requests details to help understand the level of effort made to locate the records. The local authority’s submission should outline its search strategy, which can include:

- If personal information is involved, explain how the individual is involved with the local authority (e.g. current or former employee), and why certain branches or departments were searched;
- For general requests, tie the subject matter of the request to the department, branch, etc., involved. In other words, explain why certain areas were searched and not others;
- Identify the employees involved in the search and how they are experienced in the subject matter;
- Explain how the paper and/or records management systems are organized in the departments, branches, etc., involved in the search. Explain how records are classified, for example, if they are organized by alphabet, year, function or subject. Consider providing a copy of your organization’s record schedule and/or destruction certificates. Consider how you have considered off-site records, records in possession of a third party but in the local authority’s control, and mobile devices (e.g. laptops, smartphones and tablets);
- Explain the folders searched and how the folders link back to the subject matter requested; and
- Include on what dates employees searched and how long it took for each to search. Include the results of the search. Consider having employees provide affidavits to support a position that a record searched for does not exist, or to support the details provided.

[167] The Applicant asked for “[a]ny and all City of Regina records... on myself.” In order to understand its level of search efforts related to this access to information request, the City

stated that it, “follows a standard procedure when processing Access to Information requests”. The City described its search strategy related to this access to information request accordingly:

[Date] - The Access to Information Request Advisory [number] – Applicant Records was emailed to the Directors of: People & Organizational Culture (Human Resources); Office of the City Solicitor; Water, [name of department Applicant worked for] and the Manager of Corporate Information Governance as departments likely to have responsive records.

Throughout the process the City did its utmost to perform a fulsome search for records in departments that would reasonably be expected to have records, on multiple occasions. In every instance where the applicant indicated [they] believed a record was missed in the search, the City responded quickly, searched again, retrieved any records if they existed and provided the records to the applicant in whole or with applicable redactions, or provided correspondence to the applicant indicating that the records did not exist.

The Access and Privacy Team spent approximately 185 hours processing this request, including a considerable amount of time responding to applicant correspondence and telephone calls, as well as the applicant’s request for a review on the processing fees.

Approximately ten department employees were involved in search and retrieval. Time spent by the department contacts or the subject matter experts involved in the request was not tracked.

The City’s search for responsive records was conducted in departments that could reasonably be expected to have records.

Any records missed in the search were missed inadvertently.

It is the City’s practice, if records come to light after a request is completed, to process the records and release to the applicant.

[168] The City also acknowledged that, “[a]ny records missed in the search were missed inadvertently” and that “[i]t is the City’s practice, if records come to light after a request is completed, to process the records and release them to the applicant”. This seems apparent by some of its statements I quoted in the preceding paragraph.

[169] I note a copy of a record the Applicant provided to my office that they received from another source. The Applicant believed this record should have been included in the responsive records from the City, but it was not. Given that record appears to have been a

letter sent to the City's human resources department regarding the Applicant, I agree it should have been a record included in the Applicant's request for "any and all" records regarding themselves.

[170] I question if the City did conduct an adequate search based on two factors: 1) because the Applicant appears to have received a responsive record from another public body that appears related to the access to information request they made to the City, but which the City did not provide to the Applicant in its response; and, 2) because the City stated it would find and provide further records as the Applicant pursued or identified where they believed a record was missed. While the City may have searched what it felt were appropriate locations or files, the answers to these two considerations remains unclear to me.

[171] While the City did describe some of its search efforts, it would have been helpful for it to provide some supporting evidence. For example, the City noted it had department contacts complete its "Search Criteria Form", but did not provide my office with the results of individual searches. The City also did not provide my office with any of the correspondence it had with department contacts (e.g. emails) that would support the confirmation or existence of records held by them. Such supporting documentation or evidence may have helped my office better understand the City's search efforts and why some responsive records were not initially located. For these reasons, I find that the City did not conduct an adequate search for records. I recommend the City conduct a further search for records and include details of its search and any records found to the Applicant.

13. Did the City meet legislated timelines pursuant to sections 7 and 12 of LA FOIP?

[172] Subsection 7(2) of LA FOIP states that a local authority has an obligation to respond to an access to information request within 30 days. Subsection 7(2) of LA FOIP provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[173] Subsection 12(1) of LA FOIP enables local authorities to extend the 30 days prescribed in subsection 7(2) for a reasonable period not exceeding 30 days. Subsection 12(1) of LA FOIP provides:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

[174] Subsection 12(2) of LA FOIP requires that a local authority provide notice of an extension to an applicant within 30 days after an access to information request is received.

[175] According to the timeline provided by the City, the City received the Applicant's access to information request on January 14, 2019, and their application fee the next day on January 15, 2019. The City issued its fee estimate to the Applicant 17 days later on February 1, 2019.

[176] On February 4, 2019, the Applicant sent the City a request for a fee waiver, which the City denied on February 5, 2019. At this point, my office attempted resolution between the Applicant and the City regarding the fee waiver. On March 7, 2019, the Applicant agreed to the resolution, which was to include a summary of records and an updated fee estimate from the City. During this timeframe, the clock on the 30 day time to respond would have stopped pending the Applicant's payment of their 50% deposit for the City's revised fee estimate pursuant to subsections 9(3) and (4) of LA FOIP.

[177] The City provided its revised fee estimate to the Applicant on March 25, 2019, and the Applicant paid a 50% deposit on the same date. At this point, the City would again have 13 days in which to provide its section 7 response to the Applicant, or by April 9, 2019.

[178] The City, however, emailed the Applicant on March 29, 2019, to provide a notice of extension because of the volume of records, and because consultations and third-party notifications were required. I find that the City provided its notice of extension within the 30-day period pursuant to subsection 12(2) of LA FOIP. The City then had until May 9, 2019 to provide its section 7 response to the Applicant.

[179] The City provided its final release of records to the Applicant on May 21, 2019, which was 11 days beyond its time to provide its section 7 response. Therefore, I find that the City did not meet the legislated timeframe to respond to the access to information request. I recommend the City monitor its response times to ensure that the measures it is taking to improve them are effective.

IV FINDINGS

[180] I find that the City has made a *prima facie* case that subsection 21(a) of LA FOIP applies to pages E1, E2, F25, F34 to F61, G1 to G7, I1 to I13, J1, K13, U1 to U7, U9 to U12, AB3, AC6, AC8 to AC10, AF14, AG11, AG27, AG28, AG41 and AG42.

[181] I find that the City has not properly applied subsection 21(b) of LA FOIP to page AC14 and AC23.

[182] I find that the City properly applied subsection 16(1)(a) of LA FOIP to pages D2 to D8, D10 to D16, D18 to D24, D26 to D32, F2, F3, F5, F8 to F14, F27 to F33, G10 to G13, H2 to H8, J7 to J71, M5, M7, M8, M12, M13, M15, M16, M18 to M22, M25 to M27, N21, N22, O2 to O11, O13 to O20, O23, Q7, R1, R7, V1 to V3, Z2 to Z4, Z6, AE1 to AE9, AE17 to AE20, AE26 to AE29, AE41 and AE42.

[183] I find that the City properly applied subsection 16(1)(b) of LA FOIP to pages C3 to C5, C10, N1 to N4, O14, O15, O18 to O20, O23, P2, R1 to R7, S1, S3 to S10, S12 to S15, S17, S19, S22, S24, S25, S31, S34 to S37, S39, T1, T3 to T11, T13, T17 to T33, U3, U4, U12, V1 to V3, W4 to W6, Z2 to Z4, Z6, AA3, AB3, AB7 to AB9, AB 12, AB13, AC2, AC4, AC8, AC9, AC11, AC14, AC15, AC18, AC20, AC24, AC28 to AC31, AC37 to AC39, AC43 to AC47, AC51, AD1 to AD7, AD9, AD11, AD12, AD18, AD19, AD21 to AD24, AD26, AF1 to AF3, AF14, AF15, AF18, AG1, AG4 to AG11, AG 14 to AG18, AG20 to AG25, AG27, AG38, AG51 and AG52.

[184] I find that the City has not properly applied subsection 15(1)(b)(ii) of LA FOIP to pages Q1, Q2, Q4, S16, AG2 and AG3.

[185] I find that the City has not properly applied subsection 18(1)(b) of LA FOIP to the GST numbers, unit costs and terms as they appear in the records at group A.

[186] I find that the City has not properly applied subsections 18(1)(c)(i), (ii) and (iii) of LA FOIP to pages C13 and C14.

[187] I find that the City has not properly applied subsection 14(1)(c) of LA FOIP to pages C7, L1 to L102, AA4, AA5, AA7 to AA11, AA13, AA14, AA16, AA17, AA19 to AA23, AA25, AA27, AA29, AA31, AA33 and AA35.

[188] I find that the City has not properly applied subsection 14(1)(d) of LA FOIP to pages C7, AG1, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG23, AG24, AG40, AG43 to AG47 and AG49.

[189] I find that the City properly applied subsection 28(1) of LA FOIP to pages A16, A21, A23 to A27, A30, A31, B1, B2, C1, C4, K1, K3, K14, K25, M17, N20, O1, P4, P12, R8, S2, T12, U1, Z6, AD15, AE5 to AE9, AF19, AG10, AG12, AG14, AG15, AG17, AG18, AG20, AG21, AG24, AG25 and AG30, and that subsection 28(1) of LA FOIP applies as how I have identified at paragraph [81] of this Report.

[190] I find that the portions of the records at pages A16, M1 to M5, M7, M8, M10, M23, M24, N5 to N8, N18 to N20, N23, N24, O12, O21, O22, O24 to O26, P1, P3, P5 to P11, Q3, S24 to S27, S31 to S33, T12, U1, U7, U8, U13, V3, V5, V6, V8, V10 to V29, V31 to V45, W2, W3, W10 to W19, W22 to W33, W35 to W41, W43, W44, W46, W47, W49, X2, X4 to X11, X13 to X27, Y2, Y4, Y5, Y7, Y8, Y10 to Y13, Y15, Y16, Y18, AA2, AB2, AB5, AB6, AB9, AB11, AC1 to AC3, AC5, AC6, AC7, AC 11, AC12, AC14, AC16 to AC19, AC25 to AC27, AC32 to AC36, AC40, AC41, AC51, AD13, AD15, AD17, AD28, AE10, AE11, AE13 to AE16, AE22 to AE25, AE31 to AE35, AE37 to AE40, AE41, AF5 to AF8, AF10 to AF13, AF17, AF18, AG13, AG23, and AG31 are non-responsive to the Applicant's access to information request.

[191] I find that the City did not conduct an adequate search for records.

[192] I find that the City provided its notice of extension within the 30-day period pursuant to subsection 12(2) of LA FOIP, but that the City did not meet the legislated timeframe to respond to the access to information request.

V RECOMMENDATIONS

[193] I recommend the City continue to withhold the portions of the records pursuant to the subsections of LA FOIP as I have identified at paragraphs [180], [182], [183], [189] and [190] of this Report.

[194] I recommend the City release the portions of the records pursuant to the subsections of LA FOIP as I have identified at paragraphs [145], [181], [184], [185], [186], [187] and [188] of this Report.

[195] I recommend the City release the portions of pages AC14 and AC23 where it has applied subsection 16(1)(a) and 16(1)(b) of LA FOIP, except for the portion of page AC14 as I have identified at paragraph [70].

[196] I recommend the City release the portions of the records on pages B1 and B2 as I have identified at paragraph [154].

[197] Although the City is not obligated to provide the Applicant with the non-responsive information, I recommend that it provide the non-responsive information identified at paragraph [190] to the Applicant subject to any exemptions.

[198] I recommend the City conduct a further search for records and include details of its search and any records found to the Applicant.

[199] I recommend the City monitor its response times to ensure that the measures it is taking to improve them are effective.

Dated at Regina, in the Province of Saskatchewan, this 4th day of November, 2020.

Ronald J. Kruzeniski, Q.C.
Office of the Saskatchewan Information and
Privacy Commissioner